No. 10383

# In the United States Circuit Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

THOMPSON PRODUCTS, INC., RESPONDENT

*ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD


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## AUTHORITIES CITED





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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

### JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order issued against respondent pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Supp. V, Title 29, Sec. 151, *et seq.*). The jurisdiction of this Court is based upon Section 10 (e) of the Act. Respondent is an Ohio corporation having its principal office in the city of Cleveland, Ohio. It operates a plant in Bell, California, where the unfair labor practices herein occurred.

STATEMENT OF THE CASE

Upon the usual proceedings had pursuant to Section 10 of the Act which are described in the Board's decision (R. 50–53), the Board issued its findings of fact, conclusions of law, and order (R. 46–79; 46 N. L. R. B. 514,[1] which may be briefly summarized as follows:

1. *Nature of respondent's business.*—Respondent, an Ohio corporation with its principal office in Cleveland, operates industrial plants in Cleveland, Ohio; Detroit, Michigan; Bell, California; and, through Thompson Products, Ltd., a subsidiary corporation, in Canada. At its Bell plant, respondent is engaged in producing and selling aircraft engine bolts and miscellaneous engine and fuselage parts. Respondent purchased this plant as a going concern on April 8, 1937, from Jadson Motor Products Company and operated it under the name of that Company until about July 1, 1940. Since the latter date, the plant has been operated under the name, "Thompson Products, Inc., West Coast Plant."

Steel is the principal raw material used by respondent at its Bell plant. In 1941 respondent purchased steel valued at not less than $350,000, of which about 85 percent was purchased and transported from sources of supply located outside the State of California. During the same year it manufactured at the

[1] In accordance with its recent practice, the Board's decision herein is in memorandum form, incorporating by reference those portions which it approves of the findings of fact, conclusions of law, and recommendations contained in the intermediate report of the Trial Examiner. In the instant case the Board adopted all but one of the Trial Examiner's findings, conclusions, and recommendations, rejecting only his conclusion that one Charles Little occupied a supervisory position (R. 46–47).

Bell plant, and sold, products valued at not less than $1,500,000. About 65 percent of these sales were made to customers outside the State of California. Respondent employs about 400 workers at its Bell plant.[2]

2. *The unfair labor practices.*—Respondent dominated and interfered with the formation and administration of Pacific Motor Parts Workers Alliance, herein called the Alliance, and contributed financial and other support to it, and by these and other specified acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (1) and (2) of the Act (R. 69–70, 73, 76).[3]

3. *The Board's order.*—The Board ordered respondent to cease and desist from the unfair labor practices found, to withdraw all recognition from and completely disestablish the Alliance as the collective bargaining representative of its employees, and to post appropriate notices (R. 47–49).

## SUMMARY OF ARGUMENT

I. The Board's findings of fact are supported by substantial evidence. Upon the facts found, respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act.

II. The Board's order is wholly valid and proper under the Act.

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[2] The Board's findings of fact as to respondent's business are based upon a stipulation entered into between counsel for the Board and for respondent (R. 95–96). No jurisdictional issue is presented.

[3] The relevant portions of the Act are printed in the Appendix, *infra*, pp. 20–21.

## ARGUMENT

### POINT I

**The Board's findings of fact are supported by substantial evidence. Upon the facts found, respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act**

#### A. Respondent's domination and support of the Alliance

##### *1. Formation of the Alliance*

Respondent took over the Bell plant in April 1937 (R. 95). A great deal of unrest and dissatisfaction had developed at that time among the employees over low wages, and the latter also were apprehensive that the new management might transfer the operations of the plant to its other branches (R. 337, 413–414, 1176–1177, 1229). The United Automobile, Aircraft, and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the Union, began an organizational campaign at the plant during this period, and a number of the employees applied for membership therein (R. 257–258, 376, 772–773).

In June 1937 respondent took definite steps to defeat the Union's organizing drive. General Manager C. V. Dachtler instructed Assistant Works Manager Victor Kangas to arrange to have an employee join the Union, at respondent's expense, for the purpose of ascertaining what progress it was making in organizing the employees (R. 420–422). Kangas asked an employee named Lewis A. Porter, with whom he was friendly, and who had had police experience, to undertake this espionage. Porter was given the money for his union dues by Head Inspector Lyman Hodges, then

acting as the local personnel manager. Porter joined the Union, attended two meetings, and reported on them to Kangas (R. 232; 261–266; 340; 373–376; 420–422).

Also during June 1937, Raymond S. Livingstone, respondent's director of personnel, came from Ohio to investigate charges that two employees had been discharged by Kangas because of their membership in the Union (R. 423–424, 1227). On this visit, Livingstone "check[ed] into conditions in the plant, from the entire standpoint of personnel administration" (R. 1228). Kangas told him of the existing unrest, and in answer to a question as to "what the union situation was in the plant," informed him that "it was mostly C. I. O." (R. 1230).

Livingstone again visited the Bell plant on July 23 and this time set about organizing concrete opposition to the Union. He conferred with Dachtler and Kangas, and asked the latter to name an employee who could be trusted to initiate the organization of an inside union (R. 337–339). Dachtler also recommended the formation for the employees of "a labor organization of their own," and suggested that the department heads be called together for dinner that night (R. 339). Accordingly, a meeting was held that evening, attended by all the department heads and subforemen or leadmen (R. 340–341). At this meeting, Livingstone announced that Crawford, respondent's president, would not tolerate an "outside" union, and that, consequently, if any such union, either A. F. of L. or C. I. O., succeeded in organizing the plant, it would be

closed, and the equipment moved back East (R. 342). Livingstone also told the assembled supervisors that the Company preferred an "independent" union; that respondent's Detroit plant was organized by the C. I. O. and the Cleveland plant by an "independent" union; and that respondents had "had one headache after another with the C. I. O.," while its relationship with the "independent" had been satisfactory (R. 1235–1236; 1274–1275; 438; 1294; 1296).[4] He asked the supervisors to keep what he had said confidential, and not to let the employees know that "the company [had] ordered an independent union" (R. 341, 439).

After the meeting Livingstone asked Kangas again whether he could suggest an employee to act as bell-wether for respondent by starting an "inside labor organization" and bringing as many employees as possible to the plant office to ask for improved working conditions. Kangas answered that he could not think of anyone at the moment, and Livingstone suggested that he "sleep on it" and see what he could do the next day (R. 342–343; 440). The next morning, at the plant office, when Livingstone renewed the subject, Kangas suggested Porter, pointing out that he was an older man, had done police work, and could, in Kangas' judgment, be trusted to handle a confidential matter (R. 343–344; 440–442; 444). Kangas then approached Porter in the plant, outlined what Livingstone wanted

[4] The "independent" at Cleveland was found by the Board to have been dominated by respondent. Its finding was sustained by the Circuit Court of Appeals for the Sixth Circuit. *N. L. R. B.* v. *Thompson Products, Inc.*, 130 F. (2d) 363, enforcing 33 N. L. R. B. 1033.

him to do, and secured his assent to undertaking the task (R. 345–6; 442–443). In accordance with arrangements made earlier in the day (R. 345–346), Porter went to Livingstone's quarters at the Jonathan Club that evening, where he found Dachtler and Livingstone (R. 213–215). He was instructed to approach the employees in the plant the next day and enlist 12 or 15 of them to accompany him to the office, where, acting as spokesman, he was to ask the management for recognition of a "union of their own," better working conditions, and "a little more pay" (R. 217–218; 284–285). Livingstone promised Porter that he would be rewarded for his services by being given a lifetime job, a vacation with pay, and a sum of money (R. 285–287). On the following Monday, Porter began to execute respondent's instructions. He approached various employees in the plant and urged them to get together "to put it up to the management what we wanted . . . a little better working conditions, more pay, and form an independent union of their own" (R. 224–225).

During the same Monday morning Kangas informed Livingstone that he had heard that the C. I. O. was planning a meeting for Tuesday evening, at which time a contract was to be considered for submission to respondent. Livingstone decided to "crack that meeting before Tuesday evening" and urged Kangas to tell Porter to bring a group of employees into the office to make appropriate demands upon the management. He "didn't care what they came in for, as long as they came in and asked for something" (R. 347–348). He

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emphasized that it was imperative that at least 51 percent of the employees be herded into "an organization of their own" before Tuesday evening in order to keep them from attending the Union meeting (R. 349). Kangas accordingly asked Porter that afternoon to try to get his group of employees into the office by 2 o'clock the next day; Porter said he would try to do so (R. 349–350).

That evening Kangas called for Porter at the latter's home and then telephoned Livingstone who dictated to Kangas the text for an application card to be printed for the organization which respondent was forming (R. 226–227; 351–352). Kangas handed the text to a printer and ordered the cards for the next day (R. 353–354). On Tuesday, Porter, without checking out, left the plant as he had been instructed, picked up the cards (R. 228; 355), and on his return gave them to Head Inspector Hodges (R. 231–232).[5] Thus the application cards were ready and a name was selected before the employees took any steps to form "their" organization.

During the afternoon of July 27, Porter, pursuant to the program laid down by Livingstone (*supra*, pp. 6–7), led a group of 15 to 20 employees to the plant

[5] In an attempt to discredit Porter's testimony that the application cards were procured as he described, the Alliance introduced evidence tending to show that Porter was mistaken in testifying that he did not advance the money for the printing (R. 1123–1128). But this evidence confirms the crucial fact that Porter and not the Alliance arranged for the printing. Moreover, none of the early leaders of the Alliance knew anything about how the cards came to be printed or how the name of the organization printed thereon was selected (see, e. g., R. 677).

office. Acting as spokesman, he asked Livingstone and Dachtler for permission to form an independent union and for various improvements in working conditions (R. 232–235; 306–307; 651–652). Dachtler gave the requested permission and said that respondent was willing to consider granting pay raises and vacations with pay (R. 306–307). The committee was told to obtain the adherence of a majority of the employees (R. 652; 1301). At the close of the shift that day several employees, stationed at the plant gate, passed out the application cards which had been prepared and announced that an organizational meeting would be held that evening (R. 236–237; 362; 653). At the meeting thus announced, the employees decided to form the organization which respondent had conceived and a committee was selected to prepare an appropriate constitution (R. 654–655; 656–657; 1078–1080).

A day or so after the organization meeting of July 27 Livingstone gave Porter a rough draft of a proposed working agreement and told him to submit it to an attorney to be put in legal form. Porter selected one Wendell W. Schooling, who expressed dissatisfaction with the document after examining it, and suggested that Porter tell the management to send someone to discuss it with him (R. 240–244; 368–369). Thereafter, Porter referred the constitution committee of the Alliance to Schooling (R. 1298), and a constitution and bylaws were drawn up for the organization by this attorney (R. 658–659; 1080–1081; 1126). At this point Porter dropped out of

further active participation in the Alliance (R. 308).

Later in the week, Kangas, Porter, and Hodges were praised by Livingstone for the work they had done, at a dinner given by the latter to celebrate respondent's success in arranging the formation of the Alliance (R. 369–371). Thereafter, Porter received as the promised reward for his services an unprecedented 2-week vacation with pay (R. 249–250, 252–253).[6]

On August 12, respondent entered into a written contract with the Alliance, according it recognition as the exclusive bargaining agent for all employees at the Bell plant, granting an increase in wages, and agreeing to negotiate with the Alliance a plan to institute vacations with pay (R. 122–129). Since its execution, the contract has been renewed annually and at the time of the hearing an agreement for one year was in effect, dated November 10, 1941, which contained an automatic annual renewal clause (R. 188–208).

*2. Respondent's financial and other support of the Alliance, after its formation, and interference with its administration*

After its establishment, the Alliance continued to receive valuable support from the management. Its executive council regularly met in the plant during working hours (R. 565–568; 1164), and its officials openly solicited members and collected dues in the plant on Company time (R. 507–511; 511–513; 530–536; 606–607). A mild remonstrance against this activ-

[6] Up to this time, the hourly paid employees had not been given paid vacations (R. 407).

ity by the management in June 1942 (R. 1093–1094) was ignored by the Alliance; yet no disciplinary action was taken (R. 1145).[7]

The extent to which the Alliance is in fact company-bound is shown by its acquiescence in management interference in its internal affairs.[8] In fact, such interference was not merely tolerated, it was sought by Alliance officials. In February 1942, when President Hess of the Alliance resigned, Overlander, a member of the executive council, consulted Plant Manager Hileman in regard to a successor. Hileman expressed disappointment at Hess' resignation, saying that he had just given him "quite a build-up" in the magazine of the Society of Automotive Engineers. He then proposed various employees for the position of president and objected to one on the ground that

[7] Contrast this tolerant attitude with the severe manner in which the management asserted its disciplinary powers over members of the Union. On one occasion, Plant Manager Hileman heatedly told two employees, Smith and Spencer, whom he knew to be members of the Union, that he would throw them bodily out of the plant if they conducted any union activities on company time (R. 582; 615; 1186). Another employee, Jolly, who handed out a few union cards in the lunch room during a lunch period, was approached the next night by Foreman Guenzler and warned that the Company would not tolerate such activities even during the lunch period. The next night a bulletin was posted instructing employees to refrain from conducting private activities in the lunch room (R. 623–627).

[8] Since its organization the Alliance executive council has met at intervals of from 1 to 3 months with the management, in the plant, on company time (R. 814–1070; 1095–1096; 1097). The minutes of the first two of these meetings were prepared by Livingstone (R. 1280). The minutes of subsequent meetings were submitted to the management before being posted on the plant bulletin board (R. 811–812).

"we should have an older man" (R. 631–634). Similarly, in the fall of 1941, Alliance President Baldwin and executive council member Smith became disturbed about the participation in Alliance affairs of various supervisors. They went to Personnel Manager Millman and submitted this vital matter to him for decision (R. 1138–1139; 1146–1148). On October 23, 1941, without further consultation with any Alliance representative, Millman posted a notice in the plant, declaring that certained named employees, since they held supervisory positions, were ineligible for membership in the Alliance and were being asked to resign. The question was not submitted to the membership of the Alliance (R. 555–556; 1105–1106; 1150).

The record amply demonstrates what respondent thus acknowledged: That supervisory employees played leading roles in the Alliance at the time of its origin and for years thereafter. Several of the employees belatedly named by the management in its notice of October 23 as ineligible for membership in the Alliance were numbered among its active organizers. James Creek, first president of the organization (R. 814), served in this office for about 3 or 4 months while he was at the same time head of the plant's maintenance department (R. 1091–1092). E. T. Fickle, one of the supervisors named in the notice, took over Creek's duties when the latter was transferred to the sales department in 1938 (R. 1091). His duties have remained the same since that time (R. 537). Fickle had served on the executive council of the Alliance since its inception and had also served

as president for a long period, being reelected in September 1941 and serving thereafter in this office for about a month and a half until he was recalled (R. 539–540; R. 546, Bd. Exh. 10). C. E. Weisser, supervisor of the heat-treat department and an executive council member, had occupied his supervisory position for about 2 years previous to October 1942 (R. 1102) and had been a member of the executive council for at least 1 year of this time (R. 536–537; 553).

*3. Summation as to the Alliance*

The Alliance is entirely a creation of respondent. The employees participating in its formation acted as no more than rubber stamps. The actual mechanics of its launching were carried out in part by high Company officials, Livingstone, Dachtler, and Kangas, and in part by an employee, Porter, who acted as their "recruiting sergeant." *Triplex Screw Co.* v. *N. L. R. B.*, 117 F. (2d) 858, 860 (C. C. A. 6).[9] An attorney was selected for the Alliance by the employer's agent (*supra,* p. 9),[10] and various steps in its organization, such as the preparation of membership application cards, the creation of a committee to make demands on the Company, and the calling of

[9] The use of such agents in the formation of company-dominated unions is a familiar phenomenon. See, in addition to the *Triplex* case, cited in the text, *Union Drawn Steel Co.* v. *N. L. R. B.*, 109 F. (2d) 587, 590–591 (C. C. A. 3); *N. L. R. B.* v. *Moltrup Steel Products Co.*, 121 F. (2d) 612, 617 (C. C. A. 3); *Atlas Underwear Co.* v. *N. L. R. B.*, 116 F. (2d) 1020, 1022–1023 (C. C. A. 6); *N. L. R. B.* v. *Good Coal Co.*, 110 F. (2d) 501, 505 (C. C. A. 6), cert. denied, 310 U. S. 630.

[10] *N. L. R. B.* v. *Falk Corp.*, 308 U. S. 453, 461; *N. L. R. B.* v. *Baldwin Locomotive Works*, 128 F. (2d) 39, 49 (C. C. A. 3).

the first meeting, were all the work of the Company's officers and were carried out according to a blueprint laid down by them (*supra,* pp. 6–9). At the same time, the Company made sure of adequate information to guide its steps by engaging in the illegal practice of espionage (*supra,* pp. 4–5).

The creation of the Alliance was attended by Livingstone's open and clearly illegal expression to the plant supervisors of respondent's hostility to the C. I. O. and preference for an inside union (*supra,* pp. 5–10).[11] Thereafter, "emulating the example set by the management" (*International Association of Machinists* v. *N. L. R. B.,* 311 U. S. 72, 81), supervisory employees dominated its leadership and gave it support (*supra,* pp. 10–13). After the Alliance was under way, respondent directly interfered ~~i nits~~ affairs on more than one occasion (*supra,* pp. 11–13), and gave it typically illegal Company support (*supra,* pp. 10–13) resulting in important advantages over any *bona fide* union seeking the employees' allegiance.

With respect to respondent's violation of Section 8 (2) of the Act, this case is on all fours with the recent decision of this court in *N. L. R. B.* v. *Germain Seed and Plant Co.,* 134 F. (2d) 94 (C. C. A. 9). There, as here, an inside organization was called into being by agents of the employer who suggested the attorney who prepared the organization's constitution; once launched, the organization was run by supervisory employees and given valuable employer support. We sub-

[11] *International Association of Machinists* v. *N. L. R. B.,* 311 U. S. 72, 78; *N. L. R. B.* v. *Link-Belt Co.,* 311 U. S. 584, 600.

mit that the Board's conclusion that respondent dominated and interfered with the formation and administration of the Alliance and contributed financial and other support thereto (R. 70), is fully supported by substantial evidence.

### B. Interference, restraint, and coercion

We have noted that at the time of respondent's acquisition of the Bell Plant, the employees were apprehensive that it might be closed and its operations moved by respondent to its other plants (*supra*, p. 4). In its campaign to disrupt the Union's organizing drive, respondent exploited this fear to the utmost. Livingstone took an early opportunity to warn the supervisors that if the plant was organized by a nationally affiliated union, it would be closed down (*supra*, pp. 5–6). Similar threats were voiced by Hodges to Porter in 1937 (R. 293–294); by Hileman to a committee of the Alliance in 1938 (R. 390–391); and by Millman to an employee in 1942 (R. 577). The coercive nature of threats of this kind is well settled.[12] They go to the very root of the employees' economic security by threatening a permanent curtailment of their opportunities for earning a livelihood.

Respondent's supervisors engaged in other no less effective methods of restraining union membership.

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[12] *N. L. R. B.* v. *Bradford Dyeing Association*, 310 U. S. 318, 335; *N. L. R. B.* v. *Pacific Gas & Electric Co.*, 118 F. (2d) 780, 788 (C. C. A. 9); *N. L. R. B.* v. *Oregon Worsted Co.*, 96 F. (2d) 193, 195–196 (C. C. A. 9); *N. L. R. B.* v. *Germain Seed and Plant Co.*, 134 F. (2d) 94 (C. C. A. 9); *Oughton* v. *N. L. R. B.*, 118 F. (2d) 486, 488–489 (C. C. A. 3), cert. denied 315 U. S. 797.

When Employee Overlander applied for a job in December 1940, Personnel Director Millman asked him whether he belonged to a union. On being told by Oberlander that he was an inactive member of the Teamsters' Union, Millman advised him that respondent had a union in its shop with which it had "very friendly relations" (R. 628–629). The significance of this statement was not lost on Overlander; he "got the impression that Thompson's was more or less in favor of not having an outside union in there" (R. 630), and joined the Alliance (R. 631). When Employee Crank advised Millman in April 1942, that he was dissatisfied with the Alliance and was considering joining the Union, he became the subject of an organized campaign to make him change his mind, participated in by no less than three of respondent's management hierarchy (R. 514–518). Porter, similarly, was warned bluntly by his foreman that, "When you put that C. I. O. button on you are hanging out your neck. Somebody will take a crack at it" (R. 273–274).[13]

Respondent's extreme hostility to the C. I. O. was also voiced to its employees in its official publication, *Friendly Forum,* which is distributed without charge to all employees (R. 501, Bd. Exh. 8). An editorial carried in the issue of May 29, 1941, for example, proclaimed that (R. 1262):

> The C. I. O. has shown more contempt for Defense Efforts than it has shown desire to cooperate, while the A. F. of L. has stated a

[13] The record reveals one other extremely vulgar attempt to cast aspersions on the Union which need not be set out here in detail (R. 518–521; 617–618).

> desire to cooperate, but both have been militant in their efforts to prevent even the slightest curtailment of labor's rights, especially labor's right to strike.

The issue of September 19, 1941 reprinted an address hostile to unions by Earl Harding, which depicted them as led by dangerous agitators. The following is a typical excerpt (R. 1271):

> * * * we permitted labor organizations to be trained in Communist "labor colleges," not by educators but by agitators. We even paid expenses of such "students" to Russia for post-graduate courses in revolutionary technique * * * Then we let Communists impregnate, in many instances dominate, the American labor movement. And, in the name of "academic freedom," we let their poison filter into our schools.

The Board's conclusion that the foregoing acts and statements of respondent's supervisors, and the distribution of anti-union articles to its employees, interfered with, restrained, and coerced its employees in the rights guaranteed in Section 7 of the Act, was clearly proper. *International Association of Machinists* v. *N. L. R. B.*, 311 U. S. 72, 78; *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 588–590; *N. L. R. B.* v. *Germain Seed and Plant Co.*, 134 F. (2d) 94 (C. C. A. 9); *N. L. R. B.* v. *Pacific Gas & Electric Co.*, 118 F. (2d) 780, 788 (C. C. A. 9); *N. L. R. B.* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9), cert. denied 312 U. S. 678; *N. L. R. B.* v. *Chicago Apparatus Co.*, 116 F. (2d) 753, 756, 757 (C. C. A. 7); *N. L. R. B.*

v. *New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3); *N. L. R. B.* v. *Locomotive Finished Material Co.*, 133 F. (2d) 233, 234 (C. C. A. 8).

It cannot be contended here that respondent's assaults upon the Union were privileged as an exercise of the right of free speech. Its warnings that the plant would be closed, that the wearing of a C. I. O. button would jeopardize the wearer's job in the plant, and the like (*supra*, pp. 5–6, 15–17), were no mere expressions of opinion. They constituted threats that the employer would use his superior economic position in a manner made illegal by the Act. That such direct acts of coercion are illegal, even though vocal in form, is established by the Supreme Court's express reminder, in *N. L. R. B.* v. *Virginia Electric & Power Co.*, 314 U. S. 469, 477, that "in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways."

## Point II

**The Board's order is wholly valid and proper under the Act**

The cease and desist provisions of the Board's order (R. 47–48) are mandatory under Section 10 (c) of the Act. *N. L. R. B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Paragraph 1 (d) of the order, which directs respondent to cease and desist from "in any other manner interfering with, restraining, or coercing its employees" in the exercise of their rights under Section 7 of the Act (R. 47), is warranted in view of respondent's independent violations of Sec-

tion 8 (1) (*supra*, pp. 15–18), as well as its violation of Section 8 (2). *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426; *N. L. R. B.* v. *Pacific Gas and Electric Co.*, 118 F. (2d) 780, 789–791 (C. C. A. 9); *American Smelting & Refining Co.* v. *N. L. R. B.*, 128 F. (2d) 345 (C. C. A. 5); *N. L. R. B.* v. *Germain Seed & Plant Co.*, 134 F. (2d) 94 (C. C. A. 9).

The propriety of the provisions requiring respondent to disestablish the Alliance and withdraw recognition from it, and to post appropriate notices, are well established.

## CONCLUSION

It is respectfully submitted that the National Labor Relations Act is applicable to respondent, that the Board's findings are supported by substantial evidence, that its order is wholly valid and proper, and that a decree should issue enforcing the order in full as prayed in the Board's petition.

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JUNE 1943.

## APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person

to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power * * * to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

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